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TAGS: [ETRD](#) [KIPR](#) [ECON](#) [UP](#)
SUBJECT: UKRAINE: USG-FUNDED IPR ENFORCEMENT TRAINING
CONTINUES WORK WITH JUDGES

REFS: A) KYIV 456
B) KYIV 404
C) 2007 STATE 154669
D) 2007 KYIV 1417
E) 2007 STATE 55928

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¶1. Summary: Post, in cooperation with CLDP (Commerce), on July 9-10 held an IPR enforcement workshop for Ukrainian judges, the second in a series of events that are part of a STATE/INL-funded, IPR training initiative. Seventeen judges, mostly from southern Ukraine, as well as representatives from Ukraine's IP office, Customs, and police, attended the event. U.S., French, and local experts provided a broad introduction to IP law and facilitated discussion of problematic issues faced by Ukrainian judges, such as calculating damages and sentencing. End Summary.

Continuation of IPR Training Program

¶2. Post held an IPR enforcement workshop for Ukrainian judges July 9-10 in Odessa, Ukraine as part of our intellectual property rights (IPR) training initiative "Creating a Sustainable Ukrainian IPR Training Capability" (ref D). This initiative is part of the State Department's 2007 IPR Enforcement Training Funds Program (ref E), administered by the Bureau for International Narcotics and Law Enforcement Affairs (INL), which has allocated USD 125,000 for Ukraine (ref C). To implement the training initiative, Embassy Economic Section is working closely with the Department of Commerce's Commercial Law Development Program (CLDP), which is taking the lead in organizing the workshops. This workshop was co-financed by CLDP, with its regular budget funds, and by Post, using the INL fund cite provided in ref C. Post will provide copies of all funding documents to INL/RM.

Reaching Judiciary at Local Level

¶3. Stephen Gardner, CLDP Chief Counsel, Volodymyr Zharov, Deputy Chairman of Ukraine's State Department of Intellectual Property (SDIP), and Econoff opened the workshop. A total of 17 judges, mostly from southern Ukraine, attended. Odessa, Ukraine's largest Black Sea port, has a reputation as a center for the trade in illicit

goods, and IPR-infringing goods are no exception. Sergiy Nikulesko, head of SDIP's regional IP inspectors, noted that when he and his team attempted to step up raids on local retailers a few days before the workshop, they met with "unprecedented resistance." (Note: Econoff found a plethora of stalls at the popular Privoz market, only minutes from the workshop site, selling pirated DVDs for roughly USD 5. Trademark infringing goods also appeared to be in abundance, although were harder to positively identify as fakes. End Note.)

14. Zharov emphasized the importance of specialized IPR training for judges, saying that SDIP's goal was to help create a corps of properly-trained judges who could form an IP Chamber within various local courts. (Note: The High Commercial Court maintains a specialized IP Chamber and has a reputation for handing down better rulings than local courts. End Note.) Judges Harry Leinenweber, from the U.S. District Court for the Northern District of Illinois, and Sylvie Mandel, from the Versailles Court of Appeals (France), discussed how to handle IPR cases from a judge's perspective. Karin Ferriter, from the U.S. Patent and Trademark Office, and Matthew Lamberti, Department of Justice Intellectual Property Law Enforcement Coordinator for Eastern Europe, provided additional expertise from the U.S. side. Representatives of SDIP, the Ministry of Interior, and the Customs Service also participated.

IPR 101 for Judges

15. Presentations covered copyright, trademark, and patent law, as well as key international IPR enforcement

provisions. There were lengthy discussions on how judges should calculate damages in IPR cases, a tricky matter in Ukrainian law (ref D), but an essential step in prosecuting a case. Lamberti argued that a defendant's sentence (i.e. jail term and/or fine) should generally be based on the number of infringing copies times the retail price of the infringed good, and that damages should be based on the estimated actual loss to the victim. Some judges indicated that Ukrainian law was unclear on how to calculate the value of the infringement in a piracy case, and that that judges should receive additional guidance on that issue. The Ukrainian judges also asked for advice on using expert testimony and how to handle contradictory rulings by courts in different jurisdictions. (Note: IPR infringers often use obscure courts in far-away jurisdictions, presumably by paying bribes, to secure rulings against legitimate rights holders. End Note.) In addition, a few judges expressed confusion on what evidence should be required by courts before ordering a search of suspicious premises and seizure of infringing goods stored in such premises.

16. Sergiy Nikulesko, head of SDIP's regional IP inspectors, complained that some judges continued to hand down lax sentences to IPR infringers -- often the minimum fine of UAH 170 (approximately USD 35) -- and argued that such sentences did not provide any meaningful deterrent. Nikulesko also complained that judges often demanded that investigators provide a complete list of CDs and DVDs from a seizure, and verify that each disc was in fact a pirated copy. Judge Leinenweber and Lamberti recommended that Ukrainian courts consider using sampling techniques to limit this burden on investigators.

17. In addition, Nikulesko and a private sector speaker said that judges too often ordered infringing goods to be returned to the infringer, rather than destroyed. Nikulesko complained that the legal provisions providing for the destruction of IPR-infringing goods remain unclear and cumbersome. In his concluding remarks, Zharov agreed that destruction remains a serious issue requiring further attention.

TAYLOR